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May 16, 2003
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: November 26, 2002
Case Number: TSO-0006

This Decision concerns the eligibility of XXXXXXXXXX (hereinafter referred to as the "individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual should be granted a security clearance. As set forth below, it is my decision that the individual is not eligible for access authorization.

I. Background

The individual is employed by a contractor at a DOE facility. In August 2001, the employer applied for an access authorization for the individual. In March 2002, DOE conducted a Personnel Security Interview (PSI) with the individual. Exhibit 7. In September 2002, DOE notified the individual that reliable information in the possession of DOE has created a substantial doubt concerning his eligibility for an access authorization.

The Notification Letter stated that the derogatory information regarding the individual falls within 10 C.F.R. § 710.8 (j) and (l) (Criteria J and L). The DOE Operations Office invoked Criterion J on the basis of information that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, or other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. In this regard, the Notification Letter states that a DOE consultant-psychiatrist diagnosed the individual as suffering from Alcohol Abuse, with no evidence of rehabilitation or reformation. Criterion L is invoked when a person has allegedly engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. The DOE Operations Office invoked Criterion L based on two arrests, one for Driving Under the Influence of Alcohol in 1993 and one for Disorderly Conduct due to Public Drunkenness in 1996.

In a letter to DOE Personnel Security, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On November 26, 2002, I was appointed as Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing, the DOE counsel called two witnesses, the DOE consultant-psychiatrist (DOE psychiatrist) and a DOE personnel security specialist. The individual testified and also elected to call two colleagues as witnesses.

I received the transcript on April 24, 2003, and closed the record in this case. The transcript taken at the hearing shall be hereinafter cited as "Tr." Various documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as "Ex." Documents that were submitted by the individual during this proceeding are also exhibits to the hearing transcript and shall be cited as "Indiv. Ex."

II. Analysis

The applicable regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual's future behavior, as the Hearing Officer, I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should not be restored as I cannot conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

A. Findings of Fact

The individual was arrested for Driving under the Influence of Alcohol in 1993, and his license was suspended for six months. Ex. 3; Tr. at 10-11. In 1996, he was arrested for Disorderly Conduct related to Public Drunkenness. Tr. at 11. As a result of that arrest, the individual was given a conditional sentence of 12 months probation that included mandatory attendance at 30 Alcoholics Anonymous (AA) meetings. Ex. 4, 15. He completed the mandatory AA meeting requirement. Ex. 15 at 55. In 2000, the individual was arrested for Driving under the Influence of Alcohol, but the charge was reduced to Reckless Driving. Tr. at 11.

Between 1992 and 2001, the individual held eight jobs, several for one year or less. Ex. 14 at 10-15. In 1997, the individual declared bankruptcy. Ex. 14 at 19; PSI at 12-14. He was terminated from a job in 2001 after a confrontation with a co-worker. Ex. 14 at 10, 18; PSI at 9-12. The individual was then hired by his current employer later that year, and sometime afterward the contractor requested a security clearance for the individual. Ex. 6. The background investigation uncovered derogatory information regarding the individual, and a DOE personnel security specialist conducted a Personnel Security Interview (PSI) with the individual in March 2002 in an attempt to resolve those issues. PSI at 4. During the interview, the individual consented to an evaluation by a DOE psychiatrist. PSI at 62. The DOE psychiatrist evaluated the individual in May 2002 and diagnosed him as “in the very early stages of attempting to rehabilitate and reform himself with regard to a longstanding pattern of habitual and excessive alcohol abuse.” Ex. 7 at 10. In order to provide adequate evidence of rehabilitation or reformation, the DOE psychiatrist recommended that the individual abstain from alcohol for at least one full year, during which time he should also attend weekly AA meetings and participate in ongoing psychotherapy. Ex. 7 at 10-11. The individual testified at the hearing that he received a copy of the psychiatrist’s report, but did not recall reading the report. Tr. at 57. Despite the recommendation of the DOE psychiatrist to abstain from alcohol, the individual continued to drink. Tr. at 48-52.

In September 2002, the DOE issued a Notification Letter to the individual advising him of his procedural rights in the resolution of his eligibility for a security clearance. The individual requested a hearing on October 28, 2002.

B. Evidence of Rehabilitation and Reformation

In DOE security clearance proceedings, hearing officers have consistently found that a diagnosis of alcohol abuse raises important security concerns. *See Personnel Security Hearing*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001) (and cases cited therein). The risk in this case is that excessive use of alcohol may impair the individual’s reliability or judgment, which could also impair his ability to protect classified material and resist coercion by others. Tr. at 14. As regards the arrests, the DOE personnel security specialist testified that there is a risk that the individual is selective about which laws to follow, and which to break, and this is an indication of dishonesty and unreliability. Tr. at 15.

At the hearing, the individual attempted to mitigate DOE's security concerns by testifying that although he had not abstained from alcohol, he has changed his lifestyle for the better. Tr. at 38. The improvements that the individual has made in his life include a very close, almost familial relationship with his co-workers, a religious conversion, the purchase of a new house, and active membership in a neighborhood association. Tr. at 37-43. He testified that he does not attend AA or any similar group, but is trying to achieve abstinence on his own, without attendance at any formal treatment program. Tr. at 46. The individual stated that AA works "for some people," but that he understands the 12 Step program and is applying some of the techniques on his own. Tr. at 46.

The individual also offered the testimony of two colleagues as evidence of his rehabilitation and reformation. One witness was aware that the individual had "some past history involving alcohol," but testified that he and the individual had never discussed a "drinking problem." Tr. at 67. The witness also testified that he has observed the individual drink alcohol in a social setting. *Id.* The second witness had never socialized with the individual in any place where alcohol was served. Tr. at 75. In fact, this witness did not even know why the individual was the subject of a hearing. Tr. at 75-76.

At the conclusion of the hearing, the DOE psychiatrist offered an updated opinion regarding the mitigation of the security concerns. After observing the individual at the hearing and listening to the testimony of his witnesses, the DOE psychiatrist found no evidence of rehabilitation or reformation. Tr. at 78. He testified that the individual has clearly made positive changes in his life —e.g., a new house, a good job, and good relations with his colleagues. Tr. at 78. However, the individual continues to drink and does not appear to be aware of the potential for further problems if he does not abstain. *Id.* at 79. The DOE psychiatrist was concerned because despite a long history of legal, social, and occupational problems resulting from the individual's alcohol abuse, he has not attended any formal treatment program since 1996. *Id.* The DOE psychiatrist found it particularly telling that the second witness was not even aware that the individual had an alcohol problem. *Id.* In summary, the DOE psychiatrist testified that:

"So I'm worried about [the individual] in the sense that he hasn't addressed long-standing, really, lifelong emotional issues for himself, and he hasn't stopped drinking in the face of an entire adult life of drinking, either binge ways or irresponsibly that led to arrests and other problems."

Tr. at 80. The DOE psychiatrist was also concerned that the individual did not read his report and did not take any steps to "establish absolute sobriety." Tr. at 81.

After reviewing the record and observing the individual at the hearing, I find that the individual has not submitted adequate evidence of rehabilitation and reformation from the DOE psychiatrist's diagnosis of alcohol abuse. The individual has not provided either: (1) evidence of the 12 months of abstinence recommended by the DOE psychiatrist or (2) an opinion of a qualified expert that he has attained rehabilitation. Ex. 7 at 11. *See Personnel Security Hearing*, Case No. VSO-0396, 28 DOE ¶ 82,785 (2001). In a Part 708 proceeding, the Hearing Officer gives great deference to the expert opinions of

psychiatrists and other mental health professionals regarding rehabilitation or reformation. *See Personnel Security Hearing*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001). The DOE psychiatrist was the only mental health professional to testify at the hearing, and I found his testimony both persuasive and supported by the record of this proceeding.

A review of the individual's testimony at the hearing supports the psychiatrist's conclusion that the individual has not addressed the issue of his alcohol problem. For instance, the individual testified at the hearing that even though he received a copy of the DOE psychiatrist's report, he did not recall reading the report. Tr. at 57. He stated that "if I would have heard maybe the AA thing, I might have actually pursued it. But I really don't think AA is the thing for me." Tr. at 57-58. This statement reflects an unacceptable level of denial and minimization of the seriousness of the diagnosis of alcohol abuse. Despite the possibility of losing a valued job, the individual has not admitted that he needs help with controlling his alcohol problem. There is no evidence in the record that the individual can sustain abstinence--he abstained after a DUI arrest in 1993, but in 1996 he was arrested again for an alcohol-related offense. Tr. at 54-55. Most important for the purposes of this proceeding, however, was the individual's testimony that he was not fully committed to complete abstinence. Tr. at 56. Abstinence was not only recommended by the DOE psychiatrist, but was also an important part of the AA program, a program that the individual alleges he has incorporated into his new lifestyle. Tr. at 46. The individual also asks us to believe that a religious conversion has reformed his life, even though he testified at the hearing that he has not attended church regularly since he moved into his new home last year. Tr. at 58. Similarly, he has not investigated whether his health insurance would cover the counseling recommended by the psychiatrist. Tr. at 47. None of the actions above demonstrate that the individual is as serious as he should be about reforming the behavior that brought him to this proceeding. Therefore, based on the foregoing, I find that the individual has not mitigated the security concerns raised under Criterion J.

As regards Criterion L, the two arrests at issue occurred while the individual was under the influence of alcohol. Thus, the individual must demonstrate rehabilitation or reformation from his alcohol problem in order to mitigate the concerns raised by these arrests. *See Personnel Security Hearing*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001). As discussed above, the individual has not demonstrated the requisite degree of rehabilitation or reformation. In addition, the fact that the individual had not fully explained the extent of his alcohol problem to his witnesses increases the possibility that the individual could be vulnerable to coercion in an effort to keep his problem private. Therefore, I cannot find that the individual has mitigated the Criterion L concerns at this time.

III. Conclusion

As explained in this Opinion, I find that the DOE Operations Office properly invoked 10 C.F.R. § 710.8 (j) and (l). The individual has not presented adequate mitigating factors that would alleviate the legitimate security concerns of the DOE Operations Office. In view of these criteria and the record before me, I find that the individual has not demonstrated that granting his access authorization would not endanger the common defense and would be consistent with the national interest. Accordingly, I find that the individual's

access authorization should not be granted. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye
Hearing Officer
Office of Hearings and Appeals

Date: May 16, 2003